

REMARKS

The Restriction Requirement of October 12, 2010 identifies two invention groups:

- I. Group 1 (Claims 1-10) – directed to a nasal cannula having an angled end; and
- II. Group 2 (Claims 11-20) – directed to a nasal cannula having an outward flare.

The Restriction Requirement states that the species are “not so linked as to form a single general inventive concept under PCT Rule 13.1.” Restriction Requirement at p. 2. The Restriction Requirement also indicates that these groups “do not have any common inventive features that define a contribution over the prior art.” Id. at p. 3. According to the Restriction Requirement, “[t]he common concept linking these groups of claims together is a nasal cannula including at least one prong that is capable of high flow delivery of gases and which creates a positive airway pressure in the user’s airways. However, this concept is not novel in light of Strickland et al. (US 6679265).” Id. Finally, the Restriction Requirement indicates that the Restriction Requirement was “between product and process claims.” Id. at p. 4.

Although the Applicants respectfully disagree and do not acquiesce, the Applicants elect without traverse the invention of **Group 1**, corresponding to at least **Claims 1-10, 18-20 and 22**. While the Restriction Requirement identified Claims 18-20 as directed to the Group 2 invention, Applicants submit that Claims 18-20 actually correspond to the invention of Group 1 at least because they all indirectly depend from Claim 1. Further, while the Restriction Requirement did not identify Claim 22 as part of either Group 1 or Group 2, Applicants submit that Claim 22 also corresponds to the invention of Group 1 at least because it indirectly depends from Claim 1, as well.

To the extent that the Restriction Requirement characterizes any portion of the claims as lacking novelty with respect to known art, Applicants respectfully disagree. However, to expedite prosecution, Applicants have chosen to make the election above without traverse. Applicants do not acquiesce to the characterization of the claims and reserve the right to further argue the patentability of the Claims over the applied art in the future.

In addition, Applicants respectfully disagree with the Restriction Requirement’s characterization of the claims as “product and process” claims. Indeed, all of the claims are directed to a “breathing assistance apparatus.” Nevertheless, Applicants choose to elect the invention of Group 1 without traverse in order to expedite prosecution.

Conclusion

The Application is now in condition for examination on the merits and Applicants respectfully request the same. If the Examiner has any questions which may be answered by telephone, the Examiner is invited to call the undersigned directly.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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